IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12882 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MK PARMAR

Versus

DIRECTOR SOCIAL WELFARE DEPTT

Appearance:

1. Special Civil Application No. 12882 of 1994

MR CB DASTOOR for Petitioner No. 1

Mrs. Manisha L. Shah, AGP for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

1. The grievance of the petitioner in this petition is with regard to the order dated 16th November 1994

passed by the respondent, whereby, the petitioner was transferred from Ahmedabad to the District Social Welfare Office, Godhra, in an arbitrary manner. The case of the petitioner is that the impugned order of transfer was passed with a view to harass the petitioner and also because she had challenged, on earlier occasion, the order of suspension dated 29th May 1993, which was stayed by this Court in Special Civil Application No.6273 of 1993. It is further submitted that the order of transfer is as a result of vindictiveness exhibited by the respondent and to obviate the order of stay passed by this court in the earlier Special Civil Application No.6273 of 1993..

2. By order dated 25th November 1994, this Court issued Rule in the present petition, and also granted ad-interim relief in terms of paragraph 10(C) in favour of the petitioner, and, thereafter, by order dated 29th June 1995, the said ad-interim relief was confirmed.

3. The learned Assistant government Pleader has submitted that, by passage of time for about ten years, the petitioner has remained at Ahmedabad by virtue of the interim order passed by this Court, and the respondent is not in a position to take any action against the petitioner.

4. Having heard the learned advocates for the parties and on going through the record of the case, in my view, the order of transfer dated 16th November 1994 appears to be arbitrary on the face of it, in as much as, in clause 5 of the said order, it is stated that at the place of transfer of the petitioner, i.e. Godhra, if the duties performed by the petitioner are not found satisfactory, the Authority will be compelled to terminate the service of the petitioner. Such observation made in the order of transfer by the respondent is clearly violative of the Rules pertaining to transfer more particularly when earlier order of suspension was stayed by this Court in Special Civil Application No.6273 of 1993. Under the circumstances, the order of transfer dated 16th November 1994 is required to be quashed and set aside.

5. At this stage, the learned Assistant Government Pleader has requested that the respondent may be given liberty to pass appropriate order of transfer on account of any administrative exigency or in public interest. Needless to say that the Authority can exercise the power of transfer of an employee on account of any administrative exigency or in public interest in

accordance with law. Therefore, no such observation is required to be made. No other contention is raised.

6. In the result, the petition is allowed. The order dated 16th November 1994 passed by the respondent is quashed and set aside. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)
(swamy)